# THE WORLD WAR AND ITS EFFECT ON FUTURE PRIVATE INTERNATIONAL LAW

ONE need only glance into history to see the profound influence which has been exercised over private international law by each one of those great conflicts which from time to time during the Christian era have set European nations against each other. Such conflicts agitate nations to the bottom and, when peace comes, previous relations have been transformed.

The irresistible flood of the barbarian invasions spread out over the Roman Empire, submerging all rules which had grown up out from the experience of centuries and from the teaching of Greece and the great oriental kingdoms. Whether the law which disappeared was that concerning the relations of the diverse populations over which the emperors exercised their authority, or whether it concerned the relation of the population of the empire to such distant and almost unknown lands as had kept their independence, is immaterial. For when the invaders conquered and established themselves, they brought with them the rule of the personality of laws under which each individual is ruled by the laws of the race to which he belongs. Then when Franks, Goths, and Burgundians fixed themselves definitely on conquered territories there was born the new social system called Feudalism. Its legitimate issue was the other rule, absolutely different, of the territoriality of laws. This was a system in which the laws of each country governed absolutely every person who lived there, a system under which by virtue of the *droit d'aubaine*, whatever effects a stranger left behind him when he died became the property of the territorial sovereign. It was also a system in which perpetual allegiance bound every individual as if by chains to the sovereign of the territory, whether as serf or as vassal.

Then came the Crusades. During three centuries thousands upon thousands of men left their homes, traversed Europe, and crossed the seas seeking the liberation of the Holy Sepulchre. Thus whole peoples who would otherwise have remained entirely foreign

to each other learned mutual relations. Among them and even with the unbeliever commercial relations were established, the importance of which is evidenced by the contracts of this time which have survived to our day.[1]

Then the régime of the territoriality of laws, with all its barriers between places, no matter how close to each other, soon became intolerable. Thanks to Bartolus and to other Italian jurists of his time, the theory of *statuts*, clearing the path along which private international law would travel in centuries to come, broke down the rigid theory of feudal times, made relations between peoples easier, and in that way bettered the lot of every stranger in a foreign land.

At the very moment when the theory of *statuts* began to take shape came the terrible war between France and England called the War of One Hundred Years. This was a war longer than the title given it by history (1337–1453). Thanks to Joan of Arc and her companions, French territory was finally set free, but after a long battle. This battle first tempered and then cemented the hearts of Frenchmen so that their national unity took conscious form with a precision acquired much sooner than in the case of other peoples. This consciousness was a fertile germ from which grew up new private international law. But the hundred years war had yet another important effect. From the moment when his victory appeared to be reasonably secure the King of France set himself the task of bringing back order and prosperity in his much troubled kingdom. One of his moves toward this end was to direct that all French customs should be reduced to written form. Theretofore even the vigorous customs of the various localities remained unwritten. Hence at all times and above all when invoked in controversy, it was most difficult to deal with their extent and character. Charles VII rightly believed that he had done a great service to his people. It took nearly a century and it brought with it a most interesting consequence. Upon the written custom many jurists published commentaries. In discussion the jurists had to consider to what extent each custom could extend beyond its own territory through the application of some other custom. Several writers, of whom the most illustrious were Charles Dumoulin

[1] I may cite the examples in my study of Contracts of Insurance in the Middle Ages.

(Molinoeus) and Guy Coquille, expressed new ideas which still inspire modern internationalists and elaborated the theory known as the French theory of *statuts*.

One contemporary of these men was a Breton, Bernard d'Argentré. He was the partisan of the ancient theory that laws were territorial. Without honor in his own country, his ideas were destined to triumph in many foreign lands. This was doubtless due to the Thirty Years' War, which between 1618 and 1648 swept across Europe with fire and sword. Many of its consequences are interesting in the literature of international law; foremost among them all must be the famous work of Grotius. For *De Jure Belli Ac Pacis* is a work of importance not merely in public law. More than one question of private international law is dealt with in it.[2]

But in my judgment still another consequence must be traced to this war. The famous treaties of Westphalia, which brought it to an end, also granted to Holland an independence of which she had been deprived for many centuries. Proud of their recovered liberty the Dutch people set out to defend it against every form of foreign influence. Animated by this noble thought, the commentators on the customs of the Low Countries imitated the example of D'Argentré. He had endeavored to make the customs of Brittany safe from every exterior influence. They adopted his theory and proclaimed the principle of the absolute authority of their law and custom over every inch of the territory for which it had been made. However, the most illustrious of these men, Ulric Huber, and Paul and John Voet, were not content with any literal adoption of the ideas of the Breton. They added a new element, formulating the theory of international comity or courtesy, which has since had such a great success. Not only in Holland, but also in England and in the United States of America, we find three nations in which this theory is still the foundation of private international law.

From 1789 to 1815 war in the theatre of Europe was practically continuous. Indeed, it was not limited to Europe. And those wars exercised a profound influence on the evolution of this branch

[2] For example, the condition of foreigners; the basis of allegiance; whether a man can change his country or be without one; the treatment in time of war of enemy or neutral merchants.

of law. The breaking out of the French Revolution gave the theory of nationality an importance in France such as it had never had before. It is true that under the *Ancien Régime*, as I have already indicated, they had begun to distinguish the subjects of the King, called *regnicoles*, from those who were not subjects, but from now on this distinction became substantial in France. For one thing, every citizen was called upon to participate in political life. He was an elector. He was eligible to office. Thus it was extremely important to know with accuracy what men were citizens. Moreover, these men were obliged to military service, and the long conflict practically without truces made this burden a heavy one. From day to day it became more vital to determine who was obliged to military service, and who could claim to be a foreigner and escape it. The theory of the social contract, popular with all the popularity of its author, resulted in the idea that since government depended on the consent of the governed, nationality was a bond which could be dissolved, while the old theory of perpetual allegiance led to a contrary result. Moreover, it would follow from the theory of the social contract that everyone had a right to change his country. And finally the thing most worthy of remark is that the new régime abolished all the various customs of the kingdom and replaced them by one law, extending over the whole country. This immediately produced a profound change in the point of view of French tribunals and jurists toward conflicts of law.

Before this time they concerned themselves principally with conflicts between different customs, *i. e.*, within the nation. The persons were all French, and the difference was that they were not domiciled under the same custom. Therefore it was necessary in each case to consider the place of domicile. The situation was the same as that today in the United States of America, where the conflicts between the laws of different states are very largely resolved by determining the domicile of some party in interest.

But in the new France all this stopped. From north to south and from east to west there was but one law. It replaced the innumerable feudal customs and statutes of the cities of the *Midi*. It replaced the Roman law wherever that had remained in force. There was no longer any opportunity for internal conflicts of laws. Each conflict must be between French and foreign law, international in its character, and for the solution of which the important thing

was not the domicile of the individual, but his nationality — was he French or foreign?

Thus the *Code Napoléon* proclaimed in its third article as a fundamental principle that "the status and the capacity of persons are determined by their national law." The armies of our emperor carried with them this new theory to all countries, following their flags. Most of the nations of Europe adopted it. Mancini made himself its apostle, at the same time somewhat exaggerating its scope.

The reader will pardon me, I trust, the length of this historical exposition. I have desired to point out that in all times a violent conflict between nations, although followed by peace, does not leave their peaceful relations with any such appearance or substance as before. And certainly the same result must follow from the present war, since it is the most severe and gigantic which the world has witnessed. We may, then, wisely look into the future and seek to discover in what ways private international law of tomorrow will be different from that of yesterday.

We know that the present conflict will leave a feeling of hostility and distrust between two groups of peoples, and we deduce the consequence that the allied nations will be led to exchange new favors among their citizens. To me it seems most certain of all that each nation will also inflict a rigorous treatment upon the subjects of those powers which have been its adversaries. This will give a new importance to nationality. Precision will be more valuable to each individual than ever before. Both the introduction of obligatory military service in the countries where it did not exist before and the necessity that every nation should have the largest possible army will tend to attract the attention of lawmakers to the necessity of not granting naturalization without forethought. Still more, they will distinguish as carefully as possible between their citizens and foreigners, and all nations will tolerate still less the existence of any individual without a country.

On the other hand, the problems raised by questions of nationality ordinarily difficult to handle will be multiplied and receive infinite complication by reason of this great war. For it seems to realize the imprecation against Rome which Corneille in his Horace puts in the mouth of Camille.

"May Orient and Occident join forces against her.

"May a hundred peoples coming together from the ends of the universe pass over its mountains and its seas for her destruction."

Indeed, on the one side the army of the central Empires which invaded Venetia included Germans, Austrians, Turks, Bulgarians, and perhaps Greeks. On the other side the Entente has brought together on the French front, to assist our soldiers, Belgians, English, Portuguese, and Americans, and at the same time native troops have come from Algeria, Congo, India, and elsewhere. As I walk about the streets of the peaceful university city in which I write these lines, I meet wounded men who are Russians, Italians, and Serbians fraternizing with the *poilu*. Turkish, German, Bulgarian, and Austrian prisoners are working in our countryside and on our wharves, and with them free laborers of every race, negroes, Chinese, Annamites, Kabyles, and Spaniards. When peace returns these men will not all go home, and among those who do some will take home foreign wives. Friendly and commercial relations will have been created between them and the inhabitants of the regions in which they have lived. They will introduce into their countries customs and ideals till then unknown.

What will result from this unheard-of mixture of so many different individuals? It is beyond conjecture. It makes one feel like the artist who, in search of inspiration, might shake up a kaleidoscope. Before he applies his eye he cannot tell what he will see.[3]

Some problems, however, will necessarily be put before us. On these we may now exercise what foresight we have. The task before me is to indicate the content of those problems and the solutions of which they are susceptible.

## I. Of Nationality

In England and in the United States the authors of treatises upon private international law put aside the theory of nationality, or at the best pay to it but little attention. We in France do differently, and the reason for the difference is that in England and America they think of this theory as belonging to public law. But I believe our view is preferable.

[3] Mr. R. W. Lee has written very justly: "We are at the beginning of a new age. No one can forecast with any certainty what developments even some of us who are in the middle life may live to see." "Looking Forward," 30 HARV. L. REV. 792, 800.

Certainly nationality is the bond by which an individual is bound to his state. It is equally certain that differences often arise betweeen two nations upon the nationality of an individual claimed by both. There are many such cases in which the United States has taken part.

But that is rare; the ordinary thing is that a question of individual nationality concerns above all the individual, or at most other individuals who have had legal relations with him. All this is part of the sphere of private law. No one can successfully deny that the individual is much more interested than the nation when the question is whether he may be extradited or expelled; whether he must obey particular police measures; whether he can vote or hold office; or whether he has an obligation to military service. There is even less public aspect when nationality is to be determined in order to determine capacity to do a legal act, or succession upon death, or the extent to which the law of a country accords rights to visitors. So it is, if during a suit or upon the execution of a legal act one of the parties relies upon an international convention and is met by the reply that he is not a citizen of the state with which that convention has been made. Finally, when a woman is about to marry, it is a matter of the highest importance for her to know exactly the nationality of her husband, since practically all law imposes it on her. What could be more horrible than the situation of a French woman who at this moment, believing that she had married an American, should discover that she is the wife of a German?[4]

Can one seriously maintain that in this latter case the problem has any aspect except that of purely private international law?

The theory of nationality presents, it is true, less importance in England and in the United States than it does in France. The law of the two former countries is still faithful to the application of the law of domicile. But it is none the less certain that it is impossible to study the numerous problems which private international law must solve without constantly striking some question of nationality, and it would appear to me that in the future this will be even more true than in the past.

[4] I had already written this when the Civil Tribunal of the Seine, by its judgment of February, 1917, annulled the marriage contracted since the outbreak of war by a French woman with a German who had pretended to be a Frenchman.

At the present moment the prohibition against trading with subjects of enemy states, which has been imposed upon the subjects of practically every belligerent, obliges us to inquire exactly who are the persons to whom this prohibition applies and against whom it has been formulated.

But when peace comes there are many reasons to believe that economic war will follow it. The Entente powers clearly do not intend to continue their former generous grant of rights to the subjects of their adversaries. And if their plans are carried out, it is clear that in private law it will be even more important after the war to know clearly the nationality of each individual. The proposed economic policy also shows that beyond the nationality of human individuals, that of commercial houses and of corporations or associations will require the attention of jurists and of lawmakers.

### *A. Nationality of Individuals*

For a long time international lawyers have agreed and proclaimed that every man must belong to some nation. Current events show that this is a well-founded juridical requirement. It is scandalous to see in the belligerent countries the man without a country, who leads a tranquil life, notwithstanding the war, or even grows richer by it while the citizens of the nation where he is, as it were, a guest, are undergoing every sort of suffering. They may die to secure a tranquil and lucrative life for such parasites. On the other side, these men without a country are a serious danger for the nations in which they live. From them spies, incendiaries, and all the others needed for dirty work are naturally recruited. It is against them that the Entente countries have needed defense, not only since the war, but even before it.

There are, therefore, extremely serious reasons for the contention that all legislation should be modified so as to suppress every provision by which a person may merely lose his previous nationality. Every individual who cannot claim a country of his own must accept the nationality of the country in which he resides. This measure will have no serious inconvenience, if it is combined with a proposal which I shall make later. I shall propose that in the future naturalization shall not immediately confer the rights of citizenship.

Worse than the man without a country is the man who has two countries at once. Holy Writ teaches us that one may not serve two masters. Surely it is impossible that a man should have for two nations at once sentiments which attach him without reserve. Yet both these feelings ought to animate every patriot. On this point, also, international lawyers agree and say that no man should have more than one country. Recently, it is true, the German law of July 22, 1913, called the Delbrück law, has denied this principle, providing that upon certain conditions a German, notwithstanding naturalization in a foreign country, may keep his nationality.

This opens up a subject supposed to be closed forever centuries ago when Cicero said: "*Duarum civitatum civis esse nostro jure civili nemo potest.*" [5]

But now that this danger is apparent, all nations will in future guard themselves against it, and will surely deny naturalization to every man who is authorized by his native country to abjure it without sincerity.

This is not the only reform which will be needed in the laws of naturalization. Most nations, either through liberality, or through the desire to increase the number of their citizens, have been too easy in granting nationality. In the United States five years of residence are enough. Our French law permits it in certain cases to individuals who have lived in France only three years, and in a few to some who have lived there only one year. As I have said elsewhere [6] this is regrettable, and flagrantly inconsistent with the principles which legislation like the French applies in the ordinary kind of adoption. All our lawmakers in effect agree and declare that adoption should not be recognized except where the natural relation between the father and the adopted child which would cause the serious sentiment of reciprocal affection has existed many years. No principle could be more natural, for it is the gravest of decisions to accept an individual in a family to which he is not tied by any bond of blood. But is there any less gravity in permitting a country to adopt an individual? And does it not follow that consent to such an adoption should be given only after that individual has clearly and decisively become assimilated? And as the true foundation of nationality is the community of

[5] PRO BALBO, XI, 28, note 1.

[6] BULLETIN DE LA SOCIÉTÉ DE LEGISLATION COMPARÉE (1917), 146.

sentiments, ideas, memory, and interests of the men who live and die under one flag and defend it when there is need, should we not necessarily limit naturalization to those foreigners who after a long sojourn in our country may be presumed to have adopted its customs, its thoughts, its point of view, and its economic conceptions?

If this be sound, the legislation following on the war should require three conditions for naturalization. First, the stranger should formally renounce all bonds with his native land. Second, he should justify himself by a prolonged residence for some such period as ten years. Third, his application should be published in the newspapers in such a manner as to permit every citizen who saw any danger to oppose it, with a proper interval to permit such opposition.

During the war we have learned that many Germans have become naturalized in neutral countries to make spying more easy. My plan would make that more difficult.[7]

This is not all. It is plainly too generous to give an individual, who was yesterday a foreigner, upon the morrow of his naturalization every right of a citizen such as natives have enjoyed from their birth. Thus I should recommend that in the matter of political rights a naturalized citizen should only become entitled progressively to the privileges of a native. One step in this direction has been taken by our French law of nationality on June 26, 1889. A naturalized citizen cannot become a member of Parliament until ten years after his naturalization. Soon after the elections of September, 1889, this was applied in the case of the Irish general MacAdaras, who, having been naturalized September 12, 1888 had, through financial liberality, secured his election as deputy from the Department of the Basses-Alpes.

The real danger in confiding political functions to a foreigner may be shown by two examples:[8]

Louis XVI gave Necker the most extended power. Necker was

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[7] 42 JOURNAL DU DROIT INTERNATIONAL, 39, 52, 274, 622 (1915); 43 *Ibid.*, 378, 560 (1916); 23 REVUE GÉNÉRALE DU DROIT INTERNATIONAL PUBLIC, 370 (1916).

[8] The deplorable events of the last twenty years in Russia appear to me to be largely caused by the presence of officers, functionaries of every rank, and even ministers of state who were of German origin. See CHARLES RIVER, THE LAST ROMANOF, 106 (Paris, 1917).

also one of the first idols of our Revolution. But June 17, 1798, this man, once a French minister of state, wrote:

"I was born a citizen of Geneva; I remained a citizen by my place and rank in the councils of that republic. I remained a citizen of Geneva when I represented her at a foreign court, and I showed my intention to come to finish my days in my own country when I bought in the year 1784 my dwelling at the gates of Geneva." [9]

Although Necker remained faithful to his native city he was an honest man. One cannot say as much for the Hungarian adventurer who was naturalized in England under the justly venerated name of Lincoln. Trebitch succeeded in being elected to the House of Commons, but later he was convicted both as a spy and of common crime, and received in the Tower of London the punishment which every country reserves for traitors.

We reach, it seems to me, the conclusion that the naturalized citizen should only progressively be admitted into the organization of his new country. It would be both prudent and rational that the electoral power should be granted only after a certain time. An even longer time should elapse before he is eligible to local assemblies, and longer still before he is eligible to Parliament. In the same way he should be forbidden to exercise any important function in the army, in the courts, or in public administration until the period since his naturalization is long enough to indicate that he has really broken with his country of origin.[10]

One other measure is needed to supplement those which I have indicated. Until the present war broke out, in every country naturalization, once granted, was final. The greatest qualification of this was in the United States, where, since the statute of June 29, 1906, a naturalized citizen loses his rights if he is resident in a foreign country during the five years following his naturalization. Later the statute of March 2, 1907, applied the same rule to one who has lived for two years in his native country or for five years in any other foreign country.[11] Nothing like this existed so far as

[9] Necker's letter cited by P. KOHLER, MADAME DE STAËL AND SWITZERLAND (Payot, Lausanne, 1916).

[10] The lawyer who was imposed by the German authorities upon the unfortunate Miss Cavell, and who defended her in so strange a fashion, was a German naturalized in Belgium, named Kirschen. 41 REVUE GÉNÉRALE DU DROIT, 283 *et seq.* (1917).

[11] E. M. BOURCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD, 520, 528, 533.

I know in any European legislation, until the law which permitted a German to take on a second nationality. This gave warning of a new peril. Such naturalization, if sought with no intent to be faithful, might well become a mere tool for a traitor. And this caused Articles 7 and 23 of the British statute of August 7, 1914, which made it possible to revoke certificates of naturalization obtained by fraud and to punish the guilty. Then our French laws of April 7, 1915, and June 18, 1917, granted to our tribunals, in case of war, the power to cancel the naturalization of an enemy when he had kept the nationality of his former country. These laws are a very interesting legislative innovation. Their example should be followed. Every country which is jealous of its independence and of the value of its nationality as an honorable thing, should by law provide that not only in time of war, but also in peace, naturalization might be withdrawn from any person whose acts should be declared by the tribunal to be contrary to the sentiments which he affirmed when he changed his country, *i. e.*, acts which prove that the change was not a reality.

Someone will object that in this way the number of men without a country will increase, and that this will be contrary to the wish which I have expressed above. But the answer is easy. The individual from whom a country takes away its citizenship will be treated in that country as a citizen of the state from which he came, and he will have brought it upon himself by his conduct if he becomes the real man without a country.

### *B. Nationality in Commercial Houses*

I have already expressed my views to the effect that every commercial house ought to be recognized as having nationality. The French law, more than a century old, called the law of the 27th Vendemiaire in the Year II, in its Article 12 speaks of French commercial houses, and in current language one often uses the expression.

In truth, as I have shown elsewhere,[12] a commercial house has a distinct individuality different from that of the merchant who presides over it. The proof is that this merchant may disappear

[12] VALERY, MANUEL DE DROIT INTERNATIONAL PRIVÉ, 891 (Paris, Fontemoing, 1913); also "Maison de Commerce et Fonds de Commerce," ANNALES DE DROIT COMMERCIAL, 208, 239 (1902). *Cf.* Cahill, "Jurisdiction over Foreign Corporations and Individuals who Carry on Business within the Territory," 30 HARV. L. REV. 676.

and the house will remain. He may sell it or buy another and carry it on with the first. Such houses can, and generally do, keep the name of their founder rather than that of their actual proprietor.

We should also observe that very often the domicile of a commercial house and that of the merchant are distinct. The first may be, for example, in the city of London properly speaking, the second in any part of that immense metropolis or its suburbs.

These considerations, which I cannot develop here, sufficiently indicate that a commercial house, in the same way that it has a place at which its business is done and to which its letters go, must necessarily also have a nationality.

Since the outbreak of hostilities a much more lively interest has attached to this nationality, and as the war has gone on, all the nations engaged have forbidden every sort of commercial relation with the subjects of their adversaries, have sequestrated their goods, and captured their ships and cargoes. But when peace returns, it will not be less interesting to determine the nationality of commercial houses. If economic war follows, each side will endeavor to injure the other as much as possible by imposing burdensome commercial restrictions, and thereupon it will be most important to know what commercial houses are subject to such restrictions.

The determination of the nationality of commercial houses is therefore, as it seems to me, one of the necessary things to be done after the war by the lawmakers of every country. How shall they deal with this problem? I have already indicated in the passage of my Manual which I have cited, that it should be done by giving the nationality of the country where the house is established without reference to that of the merchant.[13]

I see easily enough that this will bring upon me indignant protestations. Perhaps they will cease when the following considerations have been weighed. If one admits the theory which is the point of departure of my observations, if one admits that every commercial house has a personality of its own, one is obliged to recognize that the cause of that personality is the circumstance that the commercial house is something different from that of the person of the merchant. Just as a royal house is composed of members of the royal family and also their suite, so a commercial

[13] *Supra*, note 12.

house includes both the merchant and his employees. By reason of the presence of the latter the merchant can die or retire and the house will keep on. They then are part of this life as much as he is, and if, in determining the nationality of the house, we care about the nationality of its members, the agents, as well as the principal, are material. Plainly enough there are insuperable difficulties in the way of making the merchant's nationality the test.

But suppose we should be content with that test, other practical difficulties would be inevitable. Everyone who did business with the house would have to know the nationality of the merchant. This is in no way a patent thing. The name may be misleading. The merchant may be Dupont and from the United States, or Mayer and the descendant of an Alsatian who chose to be a Frenchman. Hence the need of the black list by which the states at war advertise those houses which are with the enemy.

No such difficulty can arise if the nationality of each house of commerce depends upon its place of business, as, for instance, Paris or New York. And this is just and necessary. How can we admit that two commercial houses in the same city, in the same business, side by side, should differ because one belongs to an English merchant and the other to a German? Think of the complications which would follow, and following on them the lawsuits. Another thing seems to me of decisive importance. No commercial house can go on and do business without causing numerous debts to arise from its transactions. It must equally follow that among its creditors will be many domiciled in the country where it does business. Very likely that will be the case with all. Now can it be possible that the rights of these creditors should depend on the nationality of their debtor? That the creditors of the German and of the Englishman, whom I have imagined, should receive different treatment? Perhaps one would be declared bankrupt and the other not, under similar conditions, or if both were bankrupt the rights of their creditors might be different. Thus we see in a true light the just and practical reasons which make it necessary that every commercial house should follow the rule of immovable property and should necessarily obey but one law, the territorial one.[14]

[14] The French law of July 15, 1880, has applied this principle. It requires a license fee from every person who comes into France to secure orders for houses of

Should it further follow that the nationality of the merchant should have no effect? That a German house in France should receive the same treatment as a French one? Certainly not! The analogy which I have just indicated between real property and business houses will show us what should be the influence of the merchant's nationality upon the legal standing of his house.

The house in which I live and which belongs to me adjoins a house belonging to a Spaniard. Nevertheless, both are subject to the same French law. It determines for both how they can be mortgaged and let and the rights of those who hire them. This is so because it must be so. The other thing would be anarchy in social relations, if anyone who had to deal with a landowner must investigate even the suspicion that he was a foreigner.

But let us suppose that the owner of one of these two houses should die without a will. To know how the house will descend we may need to consult either the national law of the deceased, or that of his last domicile. Should war break out between France and Spain, then the Spanish house might be seized and sold, while I should continue in the free enjoyment of mine.

It is easy to perceive that among the rules of law applicable to any piece of property some must necessarily be laid down by the country in which it exists, and must be identical with those applicable to other property in the country. But there are others which may be determined by the nationality or the domicile of the owner. These latter include those which relate to his family and to the inheritance from him. And they also include those which consider the extent of the right which local law grants to a foreigner.

Therefore, when we are dealing with a commercial house established in France we shall find it necessary to say that it is a French house, even if it is the property of a stranger, and the result will be that by applying the law of its *situs* it will have the same duties and rights as any other French commercial house. Thus it will pay the same taxes.[15] Its responsibility for its obligations must

commerce in foreign countries, provided that in the foreign country French commercial travelers are subjected to a similar tax. Observe that it is the nationality of the business house, determined by its place of business, which this law makes applicable. How absurd it would have been to consider the nationality of the commercial traveler or of the merchant whom he represents!

[15] Certain Spanish merchants established in France claimed that the French-Spanish Convention of February 6, 1882, exempted them from the war-profits tax.

be that of articles 8 to 17 of the Commercial Code. If it stops payment it must be declared bankrupt under the conditions and with the consequences provided by the Code. On the other hand it will be entitled to undertake every kind of commercial operation, to sue and to be sued, and to have its trademarks and its patents respected exactly as if its owner were French.

But on the other hand the nationality of the owner of the house would have a bearing in every case where French law was intended to rule rather the foreigner in France than the property which he owned. Thus a French business house owned by a foreigner would not be able to own a French ship, since the law of June 11, 1845, provides that every ship under our flag must belong to French citizens at least up to half its value. And the purpose of this law was that no stranger should be able to control either directly or indirectly the portion of French territory afloat which is called a ship. Another application of the same idea arises when in the course of a suit the stipulations of an international convention are invoked in favor of a business house belonging to a foreigner. If we should refuse that, the tribunal would deny the very benefit which the treaty provided for. And our present state of war enables us to cite other cases in which certain measures reach a foreigner, striking through the shield of a business house. A notable case is prohibition against trade with the enemy. During peace the house of Schwartz Gebrüder at Barcelona carried on business with France on the same terms as any other Barcelona business house. But from the day of the outbreak of war the French government forbade the conclusion or execution of any business with enemy subjects. Hence this Barcelona business house became subject to a different rule, since otherwise the object of this measure would have failed. That object was to prevent the central powers from profiting through the medium of French citizens. Correspondence, which might be utilized by the German spy system, was also an object of this legislation, and it would not be prevented unless such a measure were effective. The sequestration of enemy property likewise must extend to business houses in France, but here

This pretension was denied by the revenue authorities. Competition between French and Spanish would be impossible if in the same commerce on the same territory the latter were excused from paying a war-profits tax of from fifty to sixty per cent and the former bore such a burden.

we find a particularly interesting manifestation of the duality of the merchant and of his house, which I am endeavoring to illuminate by these comments. Notwithstanding the sequestration of the merchant's property, the house keeps on in business with the permission of competent authorities. If they think it is for the public interest or the national defence, or for the good of its French employees or creditors that it should remain active, there is no interruption. But of course the profits of these operations cannot be remitted in any way.

And finally I foresee much criticism which is likely to be directed against these ideas. I am the first to admit that they are somewhat confused and well open to discussion. Nevertheless I shall be satisfied if my formulation calls the attention of jurists to what I deem to be an important question. And I expect discussion and light from them, and I especially hope for some decision or result upon the question of whether the different nations will be driven to recognize that commercial houses have a nationality of their own and to decide upon its terms and limitations.

### C. *Nationality of Associations* [16]

The reader may think that I have given too much time to the nationality of commercial houses. My first excuse is that the subject has scarcely been heretofore considered. My second is that it helps largely in the solution of the next question, which has been the subject of many studies in all countries, namely, the nationality of commercial associations.[17]

At this moment the question is particularly before us, for in each belligerent country it is necessary to find out what associations may be traded with, what may have their property sequestrated, which ones may sue, and which may have their property captured upon the sea.

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[16] Note by translator. Professor Valery uses the word *Société* to embrace both corporations and less definite personifications. It is here translated "associations."

[17] J. BAUMGARTEN, INTERNATIONAL RELATIONS OF COMPANY LAW; INTERNATIONAL LAW ASSOCIATION, 28th Report, 246 (1913); J. H. Hogg, 31 L. QUART. REV. 170; Lyon-Caen, 44 JOURNAL DU DROIT INTERNATIONAL, 5 (1917); Pic. *Ibid.*, 841; D'Amelio, *Ibid.*, 1224; Tchernoff, REVUE POLITIQUE ET PARLEMENTAIRE, July 10, 1916; Landry, November 10, 1916; Thaller, *Ibid.*, September 10 and October 10, 1917; 28 HARV. L. REV. 335; Albert Wahl, 37 JOURNAL DES SOCIÉTÉS, 153 (1916); Lyon-Caen, Landry, Rousseau, Barrault, BULLETIN DE LA SOCIÉTÉ DE LÉGISLATION COMPARÉE, (1916) 405, and (1917) 57 and 125.

But in times of peace the nationality of associations is none the less important. We must consider it when we determine how one can be created or can change its constitution, when we consider the extent of its capacity, and of its rights, its taxes, and the concessions which it may obtain.

Simply to enumerate these things shows that we must in every country establish a distinction between domestic and foreign associations. Some jurists of great standing refuse to recognize that these things may have nationality. They base this upon the idea that nationality necessarily implies affection, the sentiments of an individual toward his country, those which come from his birth, his education, and his family ties. They argue that nothing of this sort is true of an association.

But this is the reverse of convincing, for the conception of nationality upon which it is founded is distinctly contradicted by the reality. Take the case of Greeks and Armenians who are subjects to the Ottoman Empire. That controls their citizenship, but they have with that state no connection of race or sentiment. The truth is that citizenship in the legal sense is nothing but the bond between a person and a state. This bond may exist between a fictitious person and a state. The best proof of it is that from the earliest days of shipping, every ship has had its nationality. It is true that a ship is not a fictitious person, but nevertheless it has individual character, its own organization and life, and has profound resemblance to legal persons. It has a name. It is domiciled at its home port. Why then should we be surprised that it has nationality? I need not add that it must necessarily belong to some nation, for that point cannot be contested.

In the same way, and for like reasons, every association must have a nationality. The sponsors of the contrary opinion have to admit this, for one sees that they are willing to set up among associations distinctions which cannot be explained except by a difference between citizens and foreigners.

But I go further and say that to deny that a fictitious person can have a nationality would be to deny that Paris is French. And can you deny that the University of Oxford and that of Cambridge are English?

We must, therefore, follow the common opinion and recognize that commercial associations have a nationality, but the applica-

tion of this fundamental idea raises two questions with which I believe the law will be much concerned when peace returns. They are the following:

1. *Are all commercial associations capable of having a nationality?*

2. *How are we to determine the nationality of commercial associations?*

1. Surely a great progress would be realized and in the future many difficulties would be removed if on either or both of these questions the lawmakers could adopt uniform rules.

Can all commercial associations have nationality? I answer that nationality is an attribute of persons, and therefore the question obliges us to inquire what associations have a legal personality.

On this point the French theory, at least that of the French courts and of most French jurists, is simple. We think that all commercial concerns are legal persons. On the contrary there are other countries, of which England and the United States are examples, where a distinction is made.

Our associations *en nom collectif* or in *commandité* correspond to the partnership of English law which then draws a sharp line between them and what we call associations with capital or with shares which are called corporations in America or limited companies in England. These countries give legal personality only to this latter class.

This difference between the laws causes serious difficulties in international relations. We ought to get rid of it now that we are likely to have closer relations among those whom the war has made allies, and I submit that it should be removed through the adoption of the French system. If I express this opinion I feel sure that I do not do it as a chauvinist. Rather I have the profound conviction, held for a long time, that this system is required both by scientific and by practical considerations.

Take the first of these considerations. Any cursory observation requires us to admit that in mathematics the whole is the sum of all the parts. A added to B is the same thing as A and B. But in every other science the contrary is the case. If I draw a triangle or a square it is a different thing from the lines which form it. If we mix nitrogen and oxygen in certain proportions we have air.

Air in its turn is colorless, but the terrestrial atmosphere is blue. Water is colorless in itself, but the seas and oceans are green.

Turn from the physical world to the social, and we find the same thing. We speak of the passions of crowds, the crimes of mobs, the psychology of the crowd. We recognize that the assembly of individuals has itself passions, can itself commit crimes, has a psychology of its own. But there is a much greater reason if we substitute for a crowd, which is an amorphous thing of chance and without duration, an association of merchants. Here we are in the presence of a crowd of men which has been carefully organized by a contract. It has purpose, also duration. Thus it necessarily follows that this group of men has wishes and needs of its own, distinct from those of its members. It can act like a physical person. We should remember that the word itself, *persona*, had its first use in designating the mask with which actors covered their head and through the opening of which their voices issued with greater force. That was the reason why the Romans turned this word to use concerning every one who appeared upon the judicial stage, that is to say, every one who had rights and obligations, who appeared in the making of contracts, or as a party to a suit. The slave had no family, no nation, no domicile distinct from his master, no property of his own, but he was a person. And the converse follows, that from the moment when an association through its organization and resources can have property and residence, agents who can deal in its name, business affairs distinct from those of its members, it becomes one of those persons whose reciprocal relations are the object of the science of law. We must recognize that it is legally a person, and we must do that whether or no we establish the distinction in use in England, in the United States, and in Germany, between simple associations of persons and corporations with capital. That distinction should disappear.

Indeed, no matter which of these associations we consider, we shall find that it has the same quality of difference from and may have the same antagonism to its members. Also if we seek for the reason why in these particular countries these two sorts of associations are treated differently, we shall find that there is none but the historical. In the centuries which have passed, companies were created by royal charters. These authorized the for-

mation and granted the legal existence. Another historical reason is that in all European countries the Roman law has played a large part in the creation of the rules which govern associations. Now there were in the Roman law only certain great associations. These were similar to the great companies of early English law. There were companies which farmed the taxes, others to develop the public lands and mines, still others with great concessions from the state. It was these which Roman law recognized as moral persons.

If this is true it is clear that the distinction which I am criticizing rests upon no sound foundation. Practically everywhere associations may be freely formed to-day. It is no longer necessary to apply to a king. On the other hand, it is neither exact nor true to say that the Romans got on without giving personality to simple associations. There is an economic need, and it would be surprising indeed if, with their sense of what is practical, the Romans did not try to satisfy this need. Let me state the procedure by which, as I think, they accomplished the result.

In Rome the capitalists rarely did business together under their own names. They generally preferred to entrust to one of their slaves capital with which he was to undertake, for their gain, commercial or industrial operations.[18] But if there were to be important operations, either of long duration or with risks which it was desirable to avoid, there was a definite advantage that they should not be undertaken by single persons. Then two or more free citizens would create a company and buy one slave and supply him with capital to which each one of them contributed his portion. With this capital the slave would do the business directed by his masters. In this way gains and losses would be divided between them in proportion to their respective properties in the slave. But the most interesting thing is that he borrowed from them a legal personality which was lacking in himself, could make contracts in their name, sue and be sued, and figure in every legal transaction. Thus, in consequence, the Romans were able to realize an association invested with the same qualities as that which the French law deduces from legal personality.

[18] One will find the references to the texts on which I have built up this theory in my article "Maison de Commerce et fonds de Commerce," XVI ANNALES DE DROIT COMMERCIAL, 209, 225 (1902).

This excursion which I have taken into history has other value. It shows that in all eras of advanced civilization there has been a need that commercial associations should have such personality. Thus it would seem to me that there should be no serious obstacle to my plan. The British Empire and the great American Republic might well consent to give the advantages of personality to all associations, and might well suppress their distinction between partnerships and companies or corporations. This would remove a source of difficulties between French and Anglo-Saxon laws, and would also simplify the problem of nationality of associations.

2. This problem I now take up. There is none which has greater present interest.

For a long time the importance of giving precise nationality to an association has been recognized. We must note this fact to know the law which governs the extent of its capacity and the conditions under which its members came together and under which it exists, before we can apply the differences which may have been established between domestic and foreign associations. What shall be our criterion to distinguish between these two categories? Some authors have proposed to take into consideration the nationality of the associates. Others wish to give the association the nationality of the country where it has been organized. According to a third system it should follow the nationality of the territory on which we find its commercial, industrial, or agricultural establishment for which it exists. But the most generally satisfactory theory, and to my mind the best in law, attributes to the association the nationality of the state in which it has its principal place of business or *siège social*.[19]

The *siège social* is the place which one might well call the head of the society. Thence go forth the orders to which its different organs are obedient. Thither should be addressed all communications which have to do with its general direction. No association can have more than one such head, although it may possess establishments in many countries. On the other side, if we should admit, as I think we must in these times of liberty, that every individual has the right to use the nationality which suits him best, the theory which makes the nationality of an association depend upon its

[19] I have summarized in my MANUAL OF PRIVATE INTERNATIONAL LAW, § 896, the diverse theories which have been proposed on this point.

head place necessarily respects this principle and conforms to it. Each association, then, is free to establish its head place where it will, although it may be obliged to establish its center for doing its business wherever that business is to be done. Is it not legitimate and natural that a society founded by Frenchmen with French capital in whole or in a large part with French associates, which desires to develop a mine in Russia, or build a railroad in China, or own a sugar plantation in Brazil, should be French and recognized as such upon the sole condition that it should establish its head place in France? Why should it be, according to these examples, Russian, Chinese, or Brazilian?

Every other solution would be both contrary to reason and contrary also to the will of those interested, which should be respected. It is therefore not surprising that in recent years in all countries, courts and jurists have declared for this view. Shortly before the world war the sentence of arbitration given at The Hague in the controversy between Italy and Peru upon what was called the "*Affaire Canevaro*" made the nationality of an association depend upon its head place.[20] In the same way the International Conference upon the law of the air, which met at Paris in May, 1911, inserted in its project for a law, an article saying: "If the aëroplane belongs to an association the nationality shall be determined by the head place of that association."

This theory seemed at one time well established. But, like many others, it has lost ground during the gigantic battle of the last four years. That great conflict has shown us the danger to a nation at war which arises from the presence on its territory of associations which have taken its nationality but which obey orders of an enemy ruler, and which, obedient to those orders, may and do commit sabotage in munition factories, interfere with supplies, establish on their real property works needed for the operation of an army of invasion, and utilize this same property as a place from which to attack railroads, military works, and factories engaged upon national work. The great world conflict has equally thrown light on the obstacles which stand in the way of the application of measures taken against enemy acts. Associations under which enemies may hide are a most serious obstacle to such measures. Even be-

[20] De Boeck, "L'Arbitrage Canevaro," REVUE GÉNÉRALE DU DROIT INTERNATIONAL PUBLIC, 317, 354 (1913).

fore the war, indeed, the existence of these associations with a nationality different from that of their members had commenced to occupy public opinion. In many countries people were deeply moved when they saw some powerful German company sending out, it might be everywhere, affiliated companies which adopted the nationality of the territory to which they went. These enjoyed all the advantages given by the law of that country, and were really the tentacles of a sort of colossal devil-fish which, operating from Berlin or from Frankfort, reached out around the terrestrial globe. In France, a project for a law was presented in 1913, to the Chamber of Deputies, by M. Joseph Denais, intended to prohibit every association which was affiliated with a foreign concern, and which did not have a majority of French associates, from using in any way words which indicated that it was a French company.

When peace comes the interest in the subject of which I have been speaking will be even keener than now. As I have suggested and as most theories agree, the war will continue as an economic war. Each nation will be obliged to look out sharply for its own interests against the appetites of those who are on the other side today. That is one reason; but, moreover, the war itself has cast new light on the astuteness of Germany, and the means which she uses to get her grip upon industry, commerce, and navigation throughout the world.

She nearly succeeded. She would have succeeded if her own megalomania had not brought on this outbreak. It came because she believed herself invincible. We must take care that she should not make the same attempt again.

This puts before us the question whether we ought not to abandon the current theory and adopt in its place a different one, — one in which the nationality of a country should not be granted to an association until it should have something more than its head place in that nation. Should we not require that it should be composed in whole or in large part of citizens of that country?

I do not think so. We ought to mistrust these decisions which we are apt to make rapidly under the influence of our sentiments of the moment, or of some extraordinary event, before we sufficiently reflect on the resulting inconvenience. Suppose we should limit the nationality of associations in this way. Then consider what difficulties it would raise under circumstances such as these.

Suppose that Jacques, a merchant in Marseilles, associated himself with Pietro, an Italian. Then suppose, Jacques having first associated himself with his own compatriot, Jean, one of them retires and sells his interest to Pietro. Suppose Pietro, after the death of his partner, goes on in business with William, a new and English partner. We should first begin by observing that if the different partnerships thus supposed are refused any French character, it would follow that neither their constitution nor their workings would be subject to French laws. But then we should meet with two consequences absolutely outside of practical conditions. One of these would be the practical impossibility of knowing with any reasonable certainty the law that would apply to a simple association composed of persons of different nationalities. The other would be the difficulties which third persons would have if they tried to deal with a simple association governed by a foreign law. Think of what would happen in the case supposed, if a contract was governed by a different law according as to whether it was the partnership of Jacques and Jean, or the partnership of Pietro and William, which made the contract! We might well suppose that these two partnerships were established not merely in the same country, but in the same city, in the same street, in the same building.

There is only one way to get over difficulties of this kind, and that is to forbid the formation of associations which have foreigners among their members. Need I say that such a remedy is entirely inapplicable at a time like ours? It would abolish the particular evil in an absolute manner, but think of its effect on commercial relations at their present stage of development, and in view of the way in which they deserve to be encouraged!

Similar objections of equal gravity may be urged against applying any such rule to associations with shares or capital stock. Some of these laws propose that all the managers, or at least the majority, should be citizens. Others add that shares can belong to foreigners only within certain limits. Some, further, say that bearer securities can no longer be permitted; but why should we not expect that any such measures would be evaded by foreign capitalists who would use what we call "straw men"? We may say with reasonable certainty that this would be bound to happen, and if it should, the situation would be made the worse by any such

laws. Certainly it is better to know the truth and know one is dealing with a foreigner, and have a chance to suspect him of any hostile intention. That is preferable to dealing with a fellow-citizen behind whom an enemy is hidden.

I go further and say that the different measures which have been proposed with the idea of modifying the present situation about associations with capital stock and shares would all cause grave inconvenience. They would unavoidably injure in a substantial manner the economic interest of the country which put them into force. For nations need one another, and that truth is plainer to-day than ever before. Often a foreigner, by the ideas which he brings with him, by his scientific or practical knowledge, plays a fertile part in the country to which he goes, and thanks to such men very useful enterprises may be started and developed. They may even cause the most important increase in general wealth. It is also often true that a foreigner contributes to the growth of general wealth by the capital which he invests in some commercial, industrial, or agricultural establishment. Is it not both important and dangerous to deprive such elements of their fertility? One may compare them to the pollen which, carried by the wind, often fructifies the flowers of a tree previously barren.

Now this is not mere theory. The proof is in a well-known bit of history. At the end of the French Revolution the different Assemblies which governed France were inspired by the philanthropic and humanitarian ideas of Rousseau, Voltaire, and other contemporary philosophers. We suppressed practically every difference which existed under the *Ancien Régime* between Frenchmen and foreigners. Abuse and inconvenience swiftly followed, and caused a reaction. The *Code Napoléon* reflected this, and at least on one point the reaction went too far. Articles 726 and 912 decided that in the future a foreigner could not inherit in France, he could not take by a gift or legacy or through intestacy.

The consequence was immediate. After Napoleon had fallen and peace had come, all Europe went to work to cure the evils caused by war. Foreigners, and particularly Englishmen, who would otherwise have come to exploit the natural wealth of France, to open houses there, or to set up banks, declined to do so because of their very natural fear that when they died their heirs would take nothing and the state all. That was the more injurious be-

cause at this very moment the invention and the first improvement of the steam engine was beginning to cause a revolution in the industrial world. And so the French government almost without delay recognized the errors of the authors of the Code, and ended them by the law of July 14, 1819.

Likewise, if a country under the effect of current events should put burdensome restrictions on associations composed in whole or in part of foreigners, that country itself would suffer and in a very few years would be driven to a greater liberality.

Shall we conclude, because of these arguments, that we must bear all the inconvenience and all the danger which may be caused by the existence of such associations, that we should not seek a remedy of some kind? Surely not; but my view is that we ought to seek the remedy by and through the theory of the personality and the nationality of associations.

Under this theory commercial houses are assimilated in a general way to natural persons. It should then be easy to establish between commercial houses distinctions analogous to those which exist between persons. I have suggested above an idea which is already being carried out in part by legislation, that in dealing with political rights there ought to be a difference between natural-born citizens and those who are naturalized. The first have but one country and it has their entire allegiance. They are naturally qualified for plenary rights. The second, no matter how sincere, may well be presumed to have in the bottom of their hearts some attachment for their native land. I have inferred from that that they should be admitted only progressively and from trench to trench into the fortress of political rights.

Now I should make a similar distinction between associations entirely composed of native citizens and capital on the one hand, and those which have some foreign element on the other. If such distinction were made it should bring with it the following consequences.

From the point of private law there is no inconvenience in applying the same rules to native-born and naturalized citizens, to purely domestic associations and those with some foreign element. This has some substantial advantages. The security and rapidity of commercial operations, for reasons which I have already set forth, seem to require that all associations within a country should obey

the same law. Otherwise we should have complications, difficulties, and law suits for no good purpose whatsoever.

Next, as the existence of every commercial association necessarily pre-supposes the existence of a commercial house ruled by it, if we give the business the nationality of the country in which it is established, it is natural that we should do the same with the association.

But apart from private relations, each association has certain relations with the state in which it does business. These affect the public interest, and here we are dealing with a different situation. Just as I propose that the extent of political rights granted to naturalized citizens should be limited, so I express the hope that in this aspect and dealing with these relations, every association which has any foreign element should be subjected to certain limitations.

The laws of some countries have already commenced to operate along these lines. In France, for instance, the Law of April 7, 1902, declared, although somewhat indirectly, that in the future every association which owned a French ship must not only have its head place in France, but also a French president, a French manager, and a board of directors with a French majority. This rule was later extended to the Bank of Algeria. A century before, the Law of the 24th Germinal in the Year XI, which established for the first time the privileges of the Bank of France, forbade foreigners who should own shares to vote in its meetings.

At the end of the year 1916 there was founded in Paris a national company for dyes and chemical products, the object of which was to compete against the German industrial monopoly in things of that sort, and to use, when peace should come, the factories which have been built up during the war for the manufacture of explosives. Now in order to secure the return of these factories to their first use, if necessary, also to prevent the acquisition of control over them by foreigners seeking to reëstablish the monopoly, the Minister of War would not consent to turn over the factories of explosives to this company except on condition that it insert in its articles clauses establishing that the shares should be inscribed in the name of their owners, that they should not be transferable except with the consent of the directors, and that the directors might refuse their consent without assigning any reason. Other

clauses provided that the entire management should be by native-born French citizens, and that the appointment of the general manager should be subject to the approval of the Minister of War.

It seems to me that this is the sort of condition which each nation should impose upon those associations whose operations might be contrary to the public interest. Among such are shipping companies, railroad companies, those which construct fortifications or make munitions, insurance companies, bankers, mining corporations, and all associations which include among their properties ownership of land in the neighborhood of frontiers or coasts.

But I do not think even this would be a sufficient protection. As I have already said, we may well expect that foreigners who wish to control our commerce, our industry, and points of strategic importance should seek their ends through men of straw. Their intermediaries might satisfy all the conditions which the local law could impose on managers or shareholders, but they would be none the less people who merely shielded the really dangerous persons who controlled them.

The way to overcome such a danger is likewise suggested by the comparison I have already made between the nationality of associations and that of individuals. In my former comparison I showed the justice of the recent measures by which one who no sooner becomes a citizen than he shows himself unworthy may lose his rights.

Now associations which merely borrow their nationality, which merely cover foreigners in a way which causes danger for the country in which they are organized, should receive similar treatment. We have a theory of French law adequate for this subject. I do not know whether there is any corresponding theory in English or American Law. I refer to what we call the theory of *prete-nom*. It may well be applied here.

A *prete-nom* plays a part in a legal act in which he appears to be interested, but in reality the act interests only one or more other persons who wish to hide their personality behind his. If this maneuver has been employed in fraud of the law or to injure the rights of a third person, anyone interested may denounce the trick, require that the name of the persons truly interested shall appear

in the transaction, and even demand in court the rescission of everything which has been done in favor of such persons.[21]

By virtue of this theory as applied to the present matter permission should be given to the representative of the state, or even to every citizen, to pull off the mask behind which the foreigners hide themselves to accomplish those things which they could not do directly. And when it has been shown that an association is nothing but a fraudulent façade, used entirely for the execution of such a pernicious design against the public interest, a decree of nullity should be pronounced against the association.

French Law already contains the application of this idea. The statute of July 1, 1901, of *associations*, says in its twelfth article:

"Associations composed in the larger part of foreigners, those which have foreign managers, or which have their principal seat in a foreign country, if their business is of such a nature that it falsifies the normal conditions of the market for securities or merchandise or is a menace to domestic or foreign security of the state, may be dissolved by a decree of the President of the Republic." [22]

A like measure with slight difference should be applied to commercial associations. The courts should have power to dissolve them when it is established that they are really composed of foreigners, and that their existence menaces the domestic or foreign interests of the state or its credit, perhaps even its citizens. Moreover, this is a case where the same principle which is admitted to fix the nationality of associations ought to lead to this result. When we have agreed to make nationality depend upon the place where the head place of the association is established, would it not be logical to consider an association to be German, even if organized in France, and with its head place there, when it is really subservient to an association in Berlin? In other words, is it not true

[21] The law makes an interesting application of this theory in the case of the interposition of a nominal legatee. For instance, where a legacy is given to someone whose entire rôle is to see that the liberality reaches another person who would not otherwise be able to receive it. Take for instance our law which makes void any legacy given to the doctor who has attended the testator in his last sickness; such legacy is void even if it is given to the wife or children of the doctor, and they are presumed to be the mere "interposing persons." (See Articles 909, 911, of the CIVIL CODE.)

[22] In French Law the word *association* has a technical meaning and refers to all societies which are not organized for profit; for instance, scientific or philanthropic societies, and it is in this sense that the word is used in this statute.

that such an association really has its head place in Germany? It is the point from which orders are issued, to which the French association gives its obedience, and the place to which profits go when they are realized, which should determine the result.[23]

(*To be continued.*)

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[23] Translated by Richard W. Hale, Boston.